

# EXHIBIT H

# 9738

Transcript of Daniel Burke

1 (1 to 4)

Conducted on July 26, 2022

1	UNITED STATES DISTRICT COURT	1	APPEARANCES	3
2	CENTRAL DISTRICT OF CALIFORNIA	2	ON BEHALF OF THE PLAINTIFF, XR COMMUNICATIONS,	
3	-----x	3	LLC, DBA VIVATO TECHNOLOGIES:	
4	XR COMMUNICATIONS, LLC, dba VIVATO :	4	PHILIP X. WANG, ESQUIRE	
5	TECHNOLOGIES, :	5	RUSS AUGUST & KABAT	
6	Plaintiff, :	6	12424 Wilshire Boulevard	
7	V :	7	Los Angeles, California 90025	
8	: Case No.:	8	310.826.7474	
9	D-LINK SYSTEMS, INC., et al., :	9	ON BEHALF OF THE DEFENDANT, ARUBA NETWORKS,	
10	Defendants. :	10	LLC:	
11	-----x	11	ROBERT HASLAM, ESQUIRE	
12		12	KEE YOUNG LEE, ESQUIRE	
13	Videotaped Deposition of DANIEL BURKE	13	LAURA BRODKIN, ESQUIRE	
14	Conducted Virtually	14	COVINGTON & BURLING LLP	
15	Tuesday, July 26, 2022	15	850 Tenth Street, Northwest	
16	11:05 a.m. EDT	16	OneCity Center	
17		17	Washington, DC 20001	
18		18	202.662.6000	
19		19	ON BEHALF OF THE DEFENDANTS, BELKIN	
20		20	INTERNATIONAL, INC. and NETGEAR, INC.:	
21		21	SAJID SALEEM, ESQUIRE	
22		22	DUANE MORRIS LLP	
23	Job No.: 457682	23	1075 Peachtree Street, NE, Suite 2000	
24	Pages: 1 - 116	24	Atlanta, Georgia 30309	
25	Reported by: Dianna C. Kilgalen	25	404.253.6900	
1	Videotaped Deposition of DANIEL BURKE,	1	APPEARANCES CONTINUED	4
2	conducted virtually with all parties attending	2	ON BEHALF OF THE DEPONENT:	
3	remotely.	3	AARON BARHAM, ESQUIRE	
4		4	FURMAN, KORNFELD & BRENNAN	
5		5	Wall Street Plaza	
6	Pursuant to Notice, before Dianna C.	6	88 Pine Street	
7	Kilgalen, Notary Public in and for the State of	7	32nd Floor	
8	Maryland.	8	New York, New York 10005	
9		9	212.867.4100	
10		10		
11		11	Also present:	
12		12	Malcolm Cooke,	
13		13	Planet Depos AV Technician	
14		14	Drew Halton, Videographer	
15		15		
16		16		
17		17		
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Conducted on July 26, 2022

1	7
2	1 the reporter please swear in the witness?
3	2 MR. BARHAM: I will just introduce
4	3 myself. Aaron Barham with Furman, Kornfield &
5	4 Brennan. I'm representing Mr. Burke today.
6	5 P R O C E E D I N G S
7	6 DANIEL BURKE, having been duly sworn,
8	7 testified as follows:
9	8 EXAMINATION BY COUNSEL FOR THE DEFENDANT ARUBA
10	9 NETWORKS, INC.
11	10 BY MR. HASLAM:
12	11 Q. Good morning Mr. Burke. You are
13	12 appearing here today for this deposition pursuant
14	13 to subpoena. Is that correct?
15	14 A. Yes.
16	15 Q. You are represented by counsel today?
17	16 Is that correct?
18	17 A. Yes.
19	18 Q. Prior -- let me ask you this: At one
20	19 point in time, you were represented by counsel
21	20 for the Plaintiff XR Communications in connection
22	21 with this deposition, correct?
23	22 A. Yes.
24	23 Q. How did that representation come about?
25	24 A. I contacted them and I asked them if
1	25 they would be representing me or if they would
2	1 represent me and they agreed.
3	2 Q. Does XR's counsel currently represent
4	3 you in connection with this deposition?
5	4 A. No.
6	5 Q. When did that change occur?
7	6 A. I think maybe within an hour before
8	7 Mr. Wang sent an e-mail to counsel informing them
9	8 that they no longer represented me. It might
10	9 have been less, but I think an hour is safe.
11	10 Q. Was the decision to change counsel yours
12	11 or XR's counsel?
13	12 A. Can you break that down? I don't -- I
14	13 don't understand the way it's worded.
15	14 Q. Okay. You -- at one point in time in
16	15 connection with this deposition, you were
17	16 represented by counsel for XR Communications,
18	17 Russ Kabat, right?
19	18 A. That's correct.
20	19 Q. You are no longer represented by them in
21	20 connection with this deposition, correct?
22	21 A. Yes.
23	22 Q. And I understand that it was your
24	23 decision to change counsel, correct?
25	24 A. Yes.
1	25 Q. Okay. Have you been deposed before?

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<p>9</p> <p>1 A. Yes.</p> <p>2 Q. So I will dispense with any lengthy</p> <p>3 discussion. I will say that I will be asking you</p> <p>4 questions today. As the -- you were told at the</p> <p>5 beginning, if you will let me finish my</p> <p>6 questions, I will let you finish your answers.</p> <p>7 There is no judge here today. So if</p> <p>8 your counsel or someone makes an objection, you</p> <p>9 can answer the question subject to the objection,</p> <p>10 unless you have been instructed not to answer by</p> <p>11 your counsel, in which case I will assume you are</p> <p>12 going to follow your counsel's instruction.</p> <p>13 If you don't understand a question,</p> <p>14 please let me know, and if you could tell me what</p> <p>15 it is you don't understand, I will try to</p> <p>16 rephrase my question so you do understand it.</p> <p>17 Can you do those things for me?</p> <p>18 A. I won't have you reread what you -- your</p> <p>19 litany there, but I have been deposed before.</p> <p>20 Q. All right. Let me ask this: Was there</p> <p>21 anything I stated in my preparatory comments</p> <p>22 there that caused you any trouble or you thought</p> <p>23 wasn't something you could agree to?</p> <p>24 A. I don't think so, know.</p> <p>25 Q. Okay. Do you currently represent XR</p>	<p>11</p> <p>1 The answer is I didn't know these guys and I had</p> <p>2 never met them as far as I know.</p> <p>3 Q. If I throw some names out, let me know</p> <p>4 if these refresh your recollection. Was</p> <p>5 Mr. Hansen, Kai Hansen, one of the people who</p> <p>6 contacted you?</p> <p>7 A. The name is vaguely, vaguely familiar,</p> <p>8 but I couldn't say he was one of them.</p> <p>9 Q. Do you recall talking to Mr. Hansen at</p> <p>10 any time during your representation of XR</p> <p>11 Communications?</p> <p>12 A. I couldn't say. I couldn't say. I</p> <p>13 don't remember any names really. I mean, it</p> <p>14 could have been him. But I mean, to me, that</p> <p>15 name's familiar, but it almost could be like</p> <p>16 somebody that appeared in a movie, you know.</p> <p>17 That is kind of the degree of recollection.</p> <p>18 Q. Okay. How about Adrian Chraplyvy?</p> <p>19 A. The name doesn't ring a bell. I mean,</p> <p>20 Adrian rings a bell. The last name doesn't ring</p> <p>21 a bell at all.</p> <p>22 Q. How about Adrian Zajac?</p> <p>23 A. That name rings a bell.</p> <p>24 Q. Had you done any work for Mr. Zajac</p> <p>25 before?</p>
<p>10</p> <p>1 Communications today in any capacity?</p> <p>2 A. No.</p> <p>3 Q. Okay. When were you -- if you recall,</p> <p>4 when were you first retained to act on behalf of</p> <p>5 XR Communications?</p> <p>6 A. I don't remember.</p> <p>7 Q. Who contacted you to discuss</p> <p>8 representation of XR Communications?</p> <p>9 A. I don't recall. I don't recall their</p> <p>10 names. Let's put it that way.</p> <p>11 Q. Was the -- you said you don't recall</p> <p>12 their names. Was it more than one person who</p> <p>13 contacted you in connection with your</p> <p>14 representation of XR Communications?</p> <p>15 A. I have a weak recollection. If I'm</p> <p>16 getting the client correct, I recall two men</p> <p>17 contacting me regarding acquiring some patent</p> <p>18 properties, and they wanted to know if I could</p> <p>19 help them, and I said I could.</p> <p>20 Q. And prior to that conversation with</p> <p>21 those two gentlemen, had you ever done any work</p> <p>22 for them in any capacity?</p> <p>23 A. No. And let's -- you know, the</p> <p>24 recollection on the conversation with those two</p> <p>25 and that's a little weak. But that's -- but no.</p>	<p>12</p> <p>1 A. No.</p> <p>2 Q. What were you asked to do --</p> <p>3 A. Not that I recall, but I don't think so.</p> <p>4 Q. When you were retained, what was it you</p> <p>5 were asked to do?</p> <p>6 A. I was asked to help -- they wanted to</p> <p>7 acquire -- as I recall, they wanted to acquire</p> <p>8 some patent properties. I'm using that term --</p> <p>9 it's not really a term of art.</p> <p>10 But I don't remember whether it was</p> <p>11 patents or applications, but it was -- had do</p> <p>12 with patent properties. Let me use that term</p> <p>13 today. They just -- they wanted to acquire them.</p> <p>14 That was -- that was the initial -- that was the</p> <p>15 initial thing, and -- that was it.</p> <p>16 Q. After you were retained, were you</p> <p>17 provided any documentation relating to any patent</p> <p>18 properties, whether they were patents or patent</p> <p>19 applications?</p> <p>20 A. If I remember it correctly, and this</p> <p>21 recollection, you know, I will just say it one</p> <p>22 more time and then I will stop saying it, the</p> <p>23 recollection is very weak.</p> <p>24 What I recall is that I was given a</p> <p>25 draft of a document that was supposed to effect</p>

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<p>13</p> <p>1 this transaction. And if I remember right, when</p> <p>2 I loaded that document, it had nothing to do with</p> <p>3 what they wanted to do. I mean, by analogy, it</p> <p>4 was almost as if somebody came to me to buy a</p> <p>5 house and then the first draft they gave me was a</p> <p>6 car lease.</p> <p>7 It was like this just -- this has no</p> <p>8 connection with what you are telling me you want</p> <p>9 to do. That's what I recall.</p> <p>10 Q. And what transpired after that</p> <p>11 recognition by you?</p> <p>12 A. I worked on it.</p> <p>13 Q. Do you recall the name of the entity or</p> <p>14 person from whom XR Communications intended to</p> <p>15 acquire the patent properties?</p> <p>16 A. No.</p> <p>17 Q. Does the name Aequitas Equipment Finance</p> <p>18 sound familiar?</p> <p>19 A. It does.</p> <p>20 Q. To the best of your recollection, is</p> <p>21 that the entity from whom XR Communications was</p> <p>22 going to acquire the patent portfolio?</p> <p>23 A. I really don't know.</p> <p>24 Q. Did you ever talk to a Mr. Tom Sidley</p> <p>25 during your -- during the time that you</p>	<p>15</p> <p>1 whether I went to Moscow or not. It's that</p> <p>2 distinction I'm asking for.</p> <p>3 With that clarification --</p> <p>4 A. Hold on. Let me just try to understand</p> <p>5 your clarification.</p> <p>6 Q. Let me withdraw it and say it this way.</p> <p>7 I'm asking -- what I'm trying to ask you is are</p> <p>8 you telling me you don't think you ever had any</p> <p>9 conversations with anyone affiliated with</p> <p>10 Aequitas, or you don't -- you don't remember but</p> <p>11 you may have or may not have?</p> <p>12 MR. BARHAM: I object to the form of the</p> <p>13 question to the extent that it conflicts with the</p> <p>14 prior testimony, but you can respond.</p> <p>15 A. Are you asking -- you are asking a</p> <p>16 compound question. I could have answered the</p> <p>17 first half of it easily. I'm not saying I</p> <p>18 didn't. I'm definitely not saying I didn't.</p> <p>19 I'm saying I don't remember. So I very</p> <p>20 well may have. And just sitting here, you know,</p> <p>21 many years later, I just don't remember. But</p> <p>22 that -- I can't say I did. I can't say I did or</p> <p>23 I didn't.</p> <p>24 BY MR. HASLAM:</p> <p>25 Q. Okay. Thank you for the clarification.</p>
<p>14</p> <p>1 represented XR Communications?</p> <p>2 A. I don't know.</p> <p>3 Q. If I told you that Mr. Sidley was</p> <p>4 somebody affiliated with Aequitas Equipment</p> <p>5 Finance, LLC, would that help refresh your</p> <p>6 recollection?</p> <p>7 A. No. When I say I don't know, it means,</p> <p>8 you know, I don't remember. So I just -- no, it</p> <p>9 doesn't.</p> <p>10 Q. Okay. In connection with your work with</p> <p>11 XR Communications, do you recall ever contacting</p> <p>12 or discussing anything about the patent</p> <p>13 properties with anyone affiliated with an</p> <p>14 Aequitas Capital Management or Aequitas Equipment</p> <p>15 Finance?</p> <p>16 A. I just don't remember.</p> <p>17 Q. And by you don't remember, are you</p> <p>18 saying you don't remember that occurring or you</p> <p>19 don't remember one way or the other?</p> <p>20 A. I don't understand the distinction you</p> <p>21 are trying to make in your question.</p> <p>22 Q. Well, if I ask you if you have been to</p> <p>23 Moscow and you say you don't recall, it could</p> <p>24 mean you don't recall ever going to Moscow, or it</p> <p>25 could be I traveled to Russia. I don't remember</p>	<p>16</p> <p>1 And I take it because you don't know whether you</p> <p>2 did or didn't, if you did, can you tell me what</p> <p>3 you believe might have been the subject matter</p> <p>4 that you discussed with anyone from Aequitas?</p> <p>5 MR. BARHAM: Object to form. You can</p> <p>6 answer.</p> <p>7 A. Can I have that question back, please?</p> <p>8 Q. Yes. Given that you are not sure one</p> <p>9 way or the other whether you may have had</p> <p>10 conversations with someone from Aequitas, I'm now</p> <p>11 just asking you if you did, do you recall what,</p> <p>12 if anything, you discussed with anyone affiliated</p> <p>13 with Aequitas?</p> <p>14 MR. WANG: Objection to form. Calls for</p> <p>15 speculation.</p> <p>16 A. I don't remember having any</p> <p>17 conversations with anybody there, it's -- with</p> <p>18 anybody. You know, I don't remember working with</p> <p>19 Aequitas or representing Aequitas. So I just</p> <p>20 don't remember.</p> <p>21 You know, I could speculate, but I</p> <p>22 don't -- I don't think that's going to really do</p> <p>23 anybody any good here.</p> <p>24 BY MR. HASLAM:</p> <p>25 Q. I don't want you to speculate. If you</p>

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17	1 have, however, a vague recollection, I would 2 appreciate having that, but if it's just 3 guesswork, then I don't want it. It doesn't do 4 anyone any good. 5 <b>A. Mr. Haslam, I'm sorry. I just don't</b> 6 <b>have any recollection.</b> 7 Q. Okay. At some point in connection with 8 your representation of XR Communications, did you 9 receive any files relating to any patents or 10 patent applications? 11 <b>A. I don't know. I don't recall.</b> 12 Q. Other than reviewing this draft of a 13 document that you were told related to the 14 transaction by which XR Communications intended 15 to acquire some patent portfolios, do you recall 16 reviewing any other documents in connection with 17 your representation of XR Communications? 18 <b>A. Like I said, I worked on the -- there</b> 19 <b>was an agreement to acquire those patent</b> 20 <b>properties. So I don't think it's a stretch too</b> 21 <b>far to think, you know, there were multiple</b> 22 <b>drafts.</b> 23 <b>You know, when I do a document, there's</b> 24 <b>always drafts. You know, I do drafts. I go over</b> 25 <b>it, you know. I'm constantly revising it. So I</b>	19
18	1 Communications, had gone abandoned? 2 <b>A. No. I don't remember.</b> 3 Q. You have absolutely no recollection of 4 having worked on reviving a patent application 5 that had gone abandoned? Did you hear my 6 question? 7 <b>A. Again, could the court reporter read it</b> 8 <b>back? I don't think it was a question.</b> 9 Q. I will ask it again then. I will ask it 10 again. Isn't it true that during your work for 11 XR Communications, you became aware that a patent 12 application acquired by XR Communications had 13 gone abandoned? 14 MR. BARHAM: Object to form. You can 15 answer. 16 <b>A. I'm not trying to give you a hard time,</b> 17 <b>but let's not go with is it not true. All right?</b> 18 <b>There are too many negatives in there. I think</b> 19 <b>it's confusing. It's often interpreted not</b> 20 <b>literally, but we are trying to have a very clear</b> 21 <b>record.</b> 22 Q. All right. I will ask another question. 23 You worked on a patent application owned by XR 24 Communications in which the application had gone 25 abandoned, correct?	20
18	1 <b>A. I don't recall. I recall working on</b> 2 <b>some applications for XR, but I don't recall any</b> 3 <b>details.</b> 4 Q. I take it from your answer so far that 5 you have not looked at any files that you or your 6 firm may have concerning your work with XR 7 Communications. Is that correct? 8 <b>A. Somebody from your firm, I believe it</b> 9 <b>was Mr. Sharma, when he contacted me and we spoke</b> 10 <b>a few times, sent me an e-mail with an attachment</b> 11 <b>and I sort of paged through it. I didn't read</b> 12 <b>it. I think that had to do with reviving an</b> 13 <b>application.</b> 14 Q. Did that refresh your recollection at 15 all, that e-mail and attachment from Mr. Sharma? 16 <b>A. No.</b> 17 MR. HASLAM: Can I have I think it's 18 what's Tab 4 in the documents that I have 19 uploaded to the court reporter? And can you give 20 the witness control of this document? 21 AV TECH COOKE: If you click on the 22 screen, Mr. Burke, you should have control of the 23 document. 24 THE WITNESS: It's not my computer. So 25 I'm going slow here. I will let my counsel --	20

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<p>21</p> <p>1 that will change the page, but how do I -- okay. 2 Just give us a second. We are just getting it. 3 MR. HASLAM: Take your time. 4 THE WITNESS: Thanks. How do I page 5 down? 6 MR. HASLAM: If you scroll. 7 THE WITNESS: Just scroll? Okay. 8 MR. HASLAM: Or you can click on it and 9 take it up. There you go. 10 THE WITNESS: Okay. Okay. What was 11 your question to me? 12 MR. HASLAM: I just wanted you to take a 13 look at this. I now have some questions for you. 14 BY MR. HASLAM: 15 Q. Have you ever seen this document before? 16 A. No. 17 MR. HASLAM: Okay. 18 A. I don't believe so. 19 Q. Okay. You will notice on the first page 20 here that this is a document that was filed in 21 connection with an application serial number 22 10/700,329. That is the application that most, 23 if not all of my questions today will relate to. 24 You will notice that this is a 25 revocation of a Power of Attorney with a new</p>	<p>23</p> <p>1 remember ever speaking to him. 2 MR. HASLAM: Okay. 3 A. Not that you would ever try to trick me, 4 but -- 5 Q. When you say you don't know one way or 6 the other, I'm just going to push you or probe 7 you. 8 A. I understand. 9 MR. HASLAM: To make sure I find out 10 that later on, you are not going to pop up and 11 say oh, I do remember a conversation with so and 12 so. Now I am going to push you. I'm going to 13 push you a little bit when you say that. I just 14 want you to understand that. I'm not trying to 15 trick you. That is why I'm doing it? 16 A. Okay. This document does not refresh my 17 recollection as to any conversations with a 18 Mr. Brooks. 19 Q. Okay. If you will scroll down a little 20 bit to the page -- I think it's this page here at 21 the bottom? 22 A. I'm sorry. Which one? I started 23 scrolling. 24 Q. The one you are on, the one that is on 25 the screen now. If you will scroll down, there</p>
<p>22</p> <p>1 Power of Attorney and change of correspondence 2 filed appointing a Mr. Brooks as counsel for the 3 patent owner at this point in time. 4 Have you ever talked to Mr. Brooks, 5 Edward J. Brooks, III? 6 A. I don't know. 7 Q. Do you recall ever talking to Mr. Brooks 8 in connection with any of your work for XR 9 Communications? 10 MR. BARHAM: Objection. You can answer. 11 A. I don't remember. 12 Q. What did you talk to Mr. Brooks about if 13 you talk -- if you ever had a conversation with 14 him? 15 MR. BARHAM: Objection. You can answer. 16 I will say if you have a recollection, you can 17 say to the best of your ability. But as I stated 18 before, don't guess because that is not helpful 19 for anyone. 20 BY MR. HASLAM: 21 Q. Do you have an answer? 22 A. I'm -- I'm just trying -- I'm just 23 trying to understand the question in light of my 24 -- in light of our last question and answer. You 25 know, I think my previous response was I don't</p>	<p>24</p> <p>1 is a signature and a name of the person preparing 2 this right there. Signature of applicant or 3 assignee of record. There is a signature and 4 under that the name of Gary Haycox, H-A-Y-C-O-X. 5 Do you recall ever having any 6 conversations with a Gary Haycox in connection 7 with your work for XR Communications? 8 A. I can't read the document well, but in 9 light -- for your question, I do not recall 10 having a conversation with a Gary Haycox. 11 Q. Do you recall having any conversations 12 with anyone who works for or represented an 13 entity by the name of Vivato Networks? 14 A. Forgive me, but isn't -- isn't that what 15 XR's going by now? 16 Q. It is. Did you ever have any 17 conversations with anyone who worked for or was 18 affiliated with Catcher, a company by the name of 19 Catcher Holdings? 20 A. No. 21 Q. Did you ever have any conversations or 22 communications with anyone who worked for or was 23 affiliated with a company by the name of Catcher? 24 A. I need to correct my last response, 25 because I don't -- you were doing do I recall. I</p>

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<p>25</p> <p>1 don't know whether I had these conversations. I</p> <p>2 just don't remember. So I don't remember having</p> <p>3 conversations, whether I had conversations with</p> <p>4 anybody that you referred to in the last two</p> <p>5 questions.</p> <p>6 MR. HASLAM: Okay.</p> <p>7 A. I'm not going to say I didn't, but I</p> <p>8 sure as heck don't remember that I did not.</p> <p>9 Q. Likewise, you don't remember that you</p> <p>10 did?</p> <p>11 A. That's correct.</p> <p>12 Q. I won't ask this question again. If I</p> <p>13 were to ask you assuming you did have</p> <p>14 conversations, can you tell me what they were,</p> <p>15 your answer would be since I don't recall having</p> <p>16 the conversations one way or the other, I don't</p> <p>17 know what, if anything, was discussed?</p> <p>18 A. That's correct.</p> <p>19 Q. Thank you. Did you ever have any</p> <p>20 conversations with anyone who worked for or</p> <p>21 represented a company named Vivato Networks</p> <p>22 Holdings, Incorporated?</p> <p>23 A. I don't know. I just don't remember. I</p> <p>24 mean, I don't know. I can't distinguish</p> <p>25 between -- I mean, I know you have used the name</p>	<p>27</p> <p>1 11:36 a.m.)</p> <p>2 (Thereupon, the proceedings were resumed</p> <p>3 at 11:39 a.m.)</p> <p>4 THE VIDEOGRAPHER: On record 11:39.</p> <p>5 BY MR. HASLAM:</p> <p>6 Q. I think when we broke, I think I was</p> <p>7 asking you at the time we broke other than XR</p> <p>8 Communications doing business as by Vivato, were</p> <p>9 you aware that the name Vivato had been used by</p> <p>10 other companies prior to the acquisition of the</p> <p>11 patent properties by XR Communications?</p> <p>12 A. I don't remember.</p> <p>13 MR. HASLAM: Can I have pulled up I</p> <p>14 think what's Tab 10, Brooks Exhibit 7? And</p> <p>15 again, can we give control of the document to the</p> <p>16 witness?</p> <p>17 AV TECH COOKE: You should have control</p> <p>18 if you click your screen.</p> <p>19 MR. WANG: I'm sorry to interrupt. I</p> <p>20 haven't gotten a copy of the exhibits. If they</p> <p>21 could be provided like in previous depositions,</p> <p>22 that would be helpful.</p> <p>23 AV TECH COOKE: Sure. I can provide a</p> <p>24 OneDrive link with marked exhibits in just one</p> <p>25 moment.</p>
<p>26</p> <p>1 Vivato, and maybe there are various iterations of</p> <p>2 it.</p> <p>3 I have no basis for distinguishing one</p> <p>4 from the other. I sure don't have that straight</p> <p>5 if there are -- I believe there's more than one,</p> <p>6 but --</p> <p>7 Q. What is it that leads you to believe</p> <p>8 there is more than one?</p> <p>9 A. Didn't you just ask me about them before</p> <p>10 without holdings and then you asked with the</p> <p>11 holdings?</p> <p>12 MR. HASLAM: Yes.</p> <p>13 A. That's the basis.</p> <p>14 Q. Well, during the time that you</p> <p>15 represented XR Communications, did you become</p> <p>16 aware that there were entities going by the name</p> <p>17 of -- with Vivato in the name prior to XR --</p> <p>18 AV TECH COOKE: I'm sorry. Counsel, we</p> <p>19 are not on the video record. I think the</p> <p>20 videographer got dropped from the call. If you</p> <p>21 want to go off the record.</p> <p>22 MR. HASLAM: Let's go off the record.</p> <p>23 AV TECH COOKE: I guess he can't lead us</p> <p>24 off. It's like 11:36.</p> <p>25 (Thereupon, there was a recess taken at</p>	<p>28</p> <p>1 I just can't control my computer while</p> <p>2 it's being remote controlled. Of course, take</p> <p>3 your time, Mr. Burke, but I will do so after the</p> <p>4 witness is done with this document.</p> <p>5 A. I have taken a quick look at it. If you</p> <p>6 want me to do more, I will be happy to.</p> <p>7 BY MR. HASLAM:</p> <p>8 Q. No. I will ask you -- I will ask you</p> <p>9 some questions, and if in response to my</p> <p>10 questions, you want to go back and review the</p> <p>11 document, feel free to do so.</p> <p>12 Do you recognize this as a form document</p> <p>13 from the Patent and Trademark Office?</p> <p>14 A. No.</p> <p>15 Q. Do you recognize the format of the</p> <p>16 document without -- without regard to the</p> <p>17 contents of what's in the document?</p> <p>18 A. It looks to me like there are two</p> <p>19 identical documents, and then there is something</p> <p>20 stamped received by the Patent Office, which</p> <p>21 makes no sense to me because on the first page</p> <p>22 that I have on the screen now, it looks like it's</p> <p>23 something that comes from the Patent Office.</p> <p>24 So I can't -- I haven't gotten my head</p> <p>25 around why there would be a received stamp from</p>

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<p>29</p> <p>1 the patent office. So it's not -- it doesn't to</p> <p>2 me, Mr. Haslam, it doesn't look like it's one</p> <p>3 document. And that's -- I scrolled through it</p> <p>4 initially a couple of times quickly, but I don't</p> <p>5 know that you want me to spend the time to try to</p> <p>6 figure out whether there are any differences or</p> <p>7 why there are two of the same thing, if they are</p> <p>8 the same thing.</p> <p>9 MR. HASLAM: No.</p> <p>10 A. It's just a little --</p> <p>11 Q. Let me ask this: On the page -- on the</p> <p>12 first page of Brooks 11, sorry -- of Schwedler</p> <p>13 Exhibit 7, do you recognize that as a form used</p> <p>14 by the Patent and Trademark Office to communicate</p> <p>15 with an inventor or an inventor's counsel?</p> <p>16 A. Could I have this -- could I have</p> <p>17 control of the document again?</p> <p>18 MR. HASLAM: Yes.</p> <p>19 AV TECH COOKE: You should just if you</p> <p>20 click.</p> <p>21 MR. HASLAM: I'm asking right now just</p> <p>22 about the first page.</p> <p>23 A. Okay. Other than -- other than the</p> <p>24 production stamp on the bottom, it looks like --</p> <p>25 the first page looks like a PTO cover sheet.</p>	<p>31</p> <p>1 A. Correct.</p> <p>2 Q. And it's indicating that the failure to</p> <p>3 file a timely reply to the office letter mailed</p> <p>4 on 17 March, 2008, is checked as the reason why</p> <p>5 this application is now abandoned, correct?</p> <p>6 A. That's -- that's what's checked, yes.</p> <p>7 Q. Okay. Do you recall reviewing this</p> <p>8 document in connection with your work for XR</p> <p>9 Communications?</p> <p>10 A. No. I do not recall.</p> <p>11 Q. Have you ever dealt with an abandoned</p> <p>12 application before, either one that went</p> <p>13 abandoned while you were working on it, or was</p> <p>14 abandoned prior to the time that you were asked</p> <p>15 to work on it?</p> <p>16 A. Yes.</p> <p>17 Q. Other than in connection with XR</p> <p>18 Communications, have you had experience working</p> <p>19 on abandoned patent applications?</p> <p>20 A. Yes.</p> <p>21 Q. How many?</p> <p>22 A. I don't know.</p> <p>23 Q. When was the first one?</p> <p>24 A. I don't know. I have been -- I mean --</p> <p>25 I was an examiner in '81, and I became an agent</p>
<p>30</p> <p>1 Q. Okay. And the mail date typically</p> <p>2 indicates the date that the Patent Office mailed</p> <p>3 this form, correct?</p> <p>4 A. I believe so, yes.</p> <p>5 Q. And the date is January 8th, 2009 on</p> <p>6 this Schwedler Exhibit 7?</p> <p>7 A. On this first page, yes.</p> <p>8 Q. And up in the upper left-hand part of</p> <p>9 the document under application number, that</p> <p>10 typically indicates the particular application</p> <p>11 that this communication relates to?</p> <p>12 A. Yes.</p> <p>13 Q. And this one is 10/700,329, correct?</p> <p>14 A. That's what it says.</p> <p>15 Q. Okay. If you look at the second page,</p> <p>16 the second page again is a form used by the</p> <p>17 Patent and Trademark Office, correct?</p> <p>18 A. Yes. It -- yes. Again, without the</p> <p>19 production number, but yes.</p> <p>20 Q. And this particular -- this particular</p> <p>21 page of Schwedler Exhibit 7, page 2, is entitled</p> <p>22 Notice of Abandonment, correct?</p> <p>23 A. That's what it says, yes.</p> <p>24 Q. And it's again for Application</p> <p>25 10/700,329, correct?</p>	<p>32</p> <p>1 in about '83, '84. So I have been working on</p> <p>2 patent prosecution since 1984. A long time.</p> <p>3 Q. That is a long time. Have you worked on</p> <p>4 abandoned patent applications while you were a</p> <p>5 practitioner and not an examiner?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall approximately how many?</p> <p>8 A. No. But unfortunately, with people</p> <p>9 being human, stuff happens, and, you know,</p> <p>10 sometimes you have to revive applications. They</p> <p>11 have made it a lot easier relatively recently.</p> <p>12 But that's about all I can -- I mean, I can't --</p> <p>13 the question is how many, right?</p> <p>14 MR. HASLAM: Yes.</p> <p>15 A. No. I really couldn't even venture a</p> <p>16 guess.</p> <p>17 Q. You said in that answer that they have</p> <p>18 made it a lot easier. During the time period</p> <p>19 2009/2010, do you recall what the requirements</p> <p>20 were for reviving an abandoned patent</p> <p>21 application?</p> <p>22 A. I don't.</p> <p>23 Q. Did you have a practice or policy as to</p> <p>24 how you proceeded with attempting to revive an</p> <p>25 abandoned patent application in the time period</p>

<p>33</p> <p>1 2009/2010?</p> <p>2 <b>A. By the same practice I do apply with</b></p> <p>3 <b>everything.</b></p> <p>4 Q. And what is that?</p> <p>5 <b>A. Follow the rules. If you don't know the</b></p> <p>6 <b>rules, look up the rules and then follow the</b></p> <p>7 <b>rules.</b></p> <p>8 Q. As you sit here today, do you recall</p> <p>9 what the rules are for reviving a patent, an</p> <p>10 abandoned patent application?</p> <p>11 MR. BARHAM: Objection. You can</p> <p>12 respond.</p> <p>13 <b>A. Are you talking about now or back then?</b></p> <p>14 <b>BY MR. HASLAM:</b></p> <p>15 Q. Back then in the 2009/2010 time period.</p> <p>16 <b>A. I don't remember what the rules were</b></p> <p>17 <b>back then.</b></p> <p>18 Q. Do you recall what the rules are today?</p> <p>19 <b>A. I believe so. I would still double</b></p> <p>20 <b>check them, but I believe so.</b></p> <p>21 Q. What are the rules today as you</p> <p>22 understand them? I understand you haven't</p> <p>23 checked them and you don't have them in front of</p> <p>24 you. So I'm just asking for your best</p> <p>25 recollection.</p>	<p>35</p> <p>1 <b>A. I don't recall any instances like that.</b></p> <p>2 <b>Q. In connection with Application</b></p> <p>3 <b>10/700,329, what did do you to determine that the</b></p> <p>4 <b>patent application that went abandoned because of</b></p> <p>5 <b>a failure to timely file a proper reply to the</b></p> <p>6 <b>office letter mailed on 17 March, 2008 was</b></p> <p>7 <b>unintentional?</b></p> <p>8 <b>A. I don't remember.</b></p> <p>9 MR. HASLAM: Can we have Brooks Exhibit</p> <p>10 7 which I think is at Tab 10?</p> <p>11 AV TECH COOKE: Stand by.</p> <p>12 MR. HASLAM: Again, if we can give the</p> <p>13 witness control of this document.</p> <p>14 AV TECH COOKE: Sure. Just click your</p> <p>15 screen.</p> <p>16 THE WITNESS: I'm looking at it.</p> <p>17 BY MR. HASLAM:</p> <p>18 Q. Have you ever seen Brooks 7 before?</p> <p>19 <b>A. I don't know.</b></p> <p>20 Q. I showed you a document earlier</p> <p>21 indicating that Mr. Brooks, Edward J. Brooks, III</p> <p>22 had a Power of Attorney in connection with</p> <p>23 Application 10/700,329.</p> <p>24 Do you recognize Brooks 7 as a request</p> <p>25 filed in that same application by Mr. Brooks</p>
<p>34</p> <p>1 <b>A. Well, my recollection is that if</b></p> <p>2 <b>something goes abandoned unintentionally, you</b></p> <p>3 <b>pay, you know, you have to -- you say that and</b></p> <p>4 <b>they whack you with a big fee and then you are</b></p> <p>5 <b>back, you know, you are back up and running.</b></p> <p>6 Q. And all you have to do is say it was</p> <p>7 unintentional?</p> <p>8 MR. WANG: Objection to form.</p> <p>9 Mischaracterizes testimony. Calls for legal</p> <p>10 opinion.</p> <p>11 MR. BARHAM: Same.</p> <p>12 <b>A. I would check the rules.</b></p> <p>13 <b>BY MR. HASLAM:</b></p> <p>14 Q. Well, as you understand today, at least</p> <p>15 you said you would have to say it's unintentional</p> <p>16 and you pay a whopping fee and you are back up an</p> <p>17 running, correct?</p> <p>18 <b>A. I believe so. I mean, of course, it</b></p> <p>19 <b>would have to be unintentional.</b></p> <p>20 Q. How do you determine that?</p> <p>21 <b>A. Well, unfortunately, sometimes I'm the</b></p> <p>22 <b>one who made the mistake.</b></p> <p>23 Q. How about in situations where you are</p> <p>24 not the one that made the mistake, what do you</p> <p>25 do?</p>	<p>36</p> <p>1 asking to withdraw as attorney?</p> <p>2 <b>A. I would have to go back and look at them</b></p> <p>3 <b>to double check. But this appears to be he's</b></p> <p>4 <b>filing a paper to get removed, you know, request</b></p> <p>5 <b>withdrawal as attorney for this application.</b></p> <p>6 Q. All right. Mr. Brooks has been deposed</p> <p>7 in this case before. And I will represent that</p> <p>8 he testified that he did not recall having any</p> <p>9 conversations with you.</p> <p>10 Given that and having reviewed this</p> <p>11 document, do you recall ever asking Mr. Brooks</p> <p>12 why he withdrew?</p> <p>13 MR. BARHAM: Objection to form. You can</p> <p>14 answer.</p> <p>15 MR. WANG: Objection to form. Compound,</p> <p>16 confusing.</p> <p>17 <b>A. I don't -- I don't know if -- I don't</b></p> <p>18 <b>know whether I had conversations with Mr. Brooks.</b></p> <p>19 <b>I don't remember whether I had conversations with</b></p> <p>20 <b>him or a conversation or multiple conversations.</b></p> <p>21 <b>I just don't remember.</b></p> <p>22 <b>BY MR. HASLAM:</b></p> <p>23 Q. Do you have a recollection that you</p> <p>24 called Mr. Brooks at any time during your</p> <p>25 representation of XR Communications and asked him</p>



<p>37</p> <p>1 why he withdrew as counsel in connection with</p> <p>2 Application 10/700,329?</p> <p>3 MR. BARHAM: Objection.</p> <p>4 MR. WANG: Objection. Objection to</p> <p>5 form.</p> <p>6 <b>A. I don't --</b></p> <p>7 MR. WANG: Asked and answered.</p> <p>8 <b>A. I don't recall whether I had any</b></p> <p>9 <b>conversations with Mr. Brooks. So as far as the</b></p> <p>10 <b>specific detailed conversation that you referred</b></p> <p>11 <b>to in your question, I mean, I may have but I</b></p> <p>12 <b>don't remember.</b></p> <p>13 MR. HASLAM: Okay. Can I have Brooks</p> <p>14 11, please? Can you give the witness control of</p> <p>15 this document?</p> <p>16 AV TECH COOKE: Yes. You should still</p> <p>17 have control.</p> <p>18 THE WITNESS: I have taken a look at it.</p> <p>19 MR. HASLAM: Okay. I will note for the</p> <p>20 record that Brooks 11 relates to application</p> <p>21 serial number 10/700,342. I will just point out</p> <p>22 that is a different serial number than the one on</p> <p>23 the previous documents I have shown you.</p> <p>24 THE WITNESS: I thought it was.</p> <p>25 Q. Do you recall ever seeing Brooks Exhibit</p>	<p>39</p> <p>1 Q. Do you see that?</p> <p>2 <b>A. I see -- I see the portion of the</b></p> <p>3 <b>document you are referring to.</b></p> <p>4 Q. Do you know Mr. Ambrose?</p> <p>5 <b>A. The name sounds a little familiar.</b></p> <p>6 Q. In what regard is it familiar?</p> <p>7 <b>A. I don't know. I think there is an</b></p> <p>8 <b>Ambrose, New Jersey, but I don't know.</b></p> <p>9 <b>Q. Let me sharpen it up. Are you familiar</b></p> <p>10 <b>with Christopher R. Ambrose?</b></p> <p>11 <b>A. That doesn't sound -- no. I don't think</b></p> <p>12 <b>so.</b></p> <p>13 <b>Q. Have you ever had any conversations with</b></p> <p>14 <b>Christopher R. Ambrose in connection with your</b></p> <p>15 <b>work for XR Communications?</b></p> <p>16 <b>A. I don't recall. I don't remember.</b></p> <p>17 Q. I apologize if I asked you this. Do you</p> <p>18 recognize -- had you ever seen this document</p> <p>19 before I showed it to you today?</p> <p>20 <b>A. Not that I recall.</b></p> <p>21 Q. Okay. In connection with your work for</p> <p>22 XR Communications, did you work on the</p> <p>23 prosecution of patents on behalf of XR</p> <p>24 Communications?</p> <p>25 <b>A. You are not a patent attorney. You</b></p>
<p>38</p> <p>1 11?</p> <p>2 <b>A. No.</b></p> <p>3 Q. If you will look at the second page,</p> <p>4 this is an interview summary and can -- you are</p> <p>5 familiar with interview summaries in connection</p> <p>6 with prosecuting patents at the United States</p> <p>7 Patent and Trademark Office?</p> <p>8 <b>A. Yep. Yes, I am.</b></p> <p>9 Q. And what is the purpose of interview</p> <p>10 summaries?</p> <p>11 <b>A. The Patent Office would like a record</b></p> <p>12 <b>for the public of what transpired. I --</b></p> <p>13 MR. HASLAM: I'm sorry. I didn't mean</p> <p>14 to cut you off.</p> <p>15 <b>A. No. I think that's -- you asked me the</b></p> <p>16 <b>purpose of them.</b></p> <p>17 MR. HASLAM: Okay.</p> <p>18 <b>A. I think that's the purpose.</b></p> <p>19 Q. Okay. Now, you will notice the</p> <p>20 interview summary on this document relates to</p> <p>21 some conversations that the patent examiner had</p> <p>22 with a Christopher R. Ambrose on the one hand and</p> <p>23 Mr. Edward J. Brooks on the other. Do you</p> <p>24 recognize that -- see that?</p> <p>25 <b>A. I don't recognize it, sir.</b></p>	<p>40</p> <p>1 <b>prosecute patent applications, not patents. So I</b></p> <p>2 <b>did do some prosecution work on patent</b></p> <p>3 <b>applications.</b></p> <p>4 Q. For XR Communications?</p> <p>5 <b>A. I believe so, yes.</b></p> <p>6 Q. Did you at some point in time in your</p> <p>7 work on patent prosecution for XR Communications</p> <p>8 receive files relating to those prosecutions?</p> <p>9 <b>A. I don't remember.</b></p> <p>10 Q. If you -- back in the 2009/2010 time</p> <p>11 period, if you were asked to take over</p> <p>12 prosecution of patent applications which were</p> <p>13 pending in the Patent Office, was it your</p> <p>14 practice to obtain the files relating to the</p> <p>15 prosecution from the time the original</p> <p>16 application was filed up until the time that you</p> <p>17 were asked to continue prosecution?</p> <p>18 <b>A. Yes. You would want to see -- as part</b></p> <p>19 <b>of the practice, you definitely want to see what</b></p> <p>20 <b>had transpired, but I don't know if I actually</b></p> <p>21 <b>received them. I don't know if anything was</b></p> <p>22 <b>available on line.</b></p> <p>23 <b>I just -- you would have to -- if you</b></p> <p>24 <b>are going to work on something, you have to -- if</b></p> <p>25 <b>you are going to go somewhere, you have to know</b></p>

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Conducted on July 26, 2022

<p>41</p> <p>1 where you are, right, where you are starting.</p> <p>2 So, of course, you would have to have what you</p> <p>3 are working on to work on.</p> <p>4 You know, now, and I don't know what the</p> <p>5 practice was then, but now, everything is</p> <p>6 available on line. I don't know if that was the</p> <p>7 practice, you know, if everything was available</p> <p>8 on line then. I just don't recall.</p> <p>9 Q. If -- if you worked on the prosecution</p> <p>10 of Application 10/700,342, which is the</p> <p>11 application to which Brooks Exhibit 11 relates,</p> <p>12 do you recall that you would have gotten the</p> <p>13 prosecution files relating to that application</p> <p>14 before proceeding to do work on it?</p> <p>15 MR. WANG: Objection.</p> <p>16 MR. BARHAM: Objection. I guess let</p> <p>17 them put their objections on the record.</p> <p>18 MR. WANG: Thank you. Objection to form</p> <p>19 and assumes facts.</p> <p>20 A. I have a lot of problems with the</p> <p>21 question. You are saying if I did something,</p> <p>22 then you are trying to jam too much in to that</p> <p>23 question, I think. I don't recall whether I</p> <p>24 worked on this application. You said there is a</p> <p>25 different one from the other one.</p>	<p>43</p> <p>1 do on this document.</p> <p>2 THE WITNESS: No. No. We are not</p> <p>3 going -- I just don't -- I don't -- not knowing</p> <p>4 what is in the rest of the document, I'm not</p> <p>5 going to know whether something is going to help</p> <p>6 me or not. So if you want me to limit my review</p> <p>7 to the first three pages --</p> <p>8 MR. HASLAM: All right. Limit your</p> <p>9 review to the first three pages.</p> <p>10 THE WITNESS: All right. I reviewed</p> <p>11 the first three pages.</p> <p>12 Q. Have you ever seen the first three pages</p> <p>13 of Exhibit Schwedler 8?</p> <p>14 A. Some or all of this may have been</p> <p>15 included in the transmission I got from</p> <p>16 Mr. Sharma at your firm recently.</p> <p>17 Q. In the 2009/2010 time frame, did you</p> <p>18 review a copy of Schwedler Exhibit 8?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you know a Carl J. Schwedler?</p> <p>21 A. The name does not ring a bell other than</p> <p>22 seeing him on these documents.</p> <p>23 Q. Do you ever recall having any</p> <p>24 conversations with Mr. Schwedler concerning</p> <p>25 the -- any of the patent properties that you were</p>
<p>42</p> <p>1 BY MR. HASLAM:</p> <p>2 Q. Well, let me ask this: If this file,</p> <p>3 Application 10/700,342, has a Power of Attorney</p> <p>4 naming you as the attorney for representing XR</p> <p>5 Communications, was it your practice at that time</p> <p>6 in 2009/2010 to get the prosecution files before</p> <p>7 doing any work?</p> <p>8 MR. BARHAM: Objection to form. You can</p> <p>9 answer.</p> <p>10 A. I would need something. I -- I just</p> <p>11 assume I would need something. I don't -- would</p> <p>12 I get everything? I don't know.</p> <p>13 MR. HASLAM: Could I have Schwedler --</p> <p>14 Schwedler Exhibit 8, which is Tab 23?</p> <p>15 AV TECH COOKE: And you should have</p> <p>16 control.</p> <p>17 MR. HASLAM: You are free to review this</p> <p>18 document. It's a lengthy document. I am going</p> <p>19 to be focusing my questions on the first three</p> <p>20 pages of the document.</p> <p>21 THE WITNESS: Would you like me to limit</p> <p>22 my review to the first three pages?</p> <p>23 MR. HASLAM: Why don't you, and if</p> <p>24 anything I ask you makes you want to look at more</p> <p>25 of it, feel free to look at whatever you want to</p>	<p>44</p> <p>1 working on for XR Communications?</p> <p>2 A. I don't remember one way or the other.</p> <p>3 Q. And you recognize the first two pages of</p> <p>4 Exhibit Schwedler 8 as a petition to revive an</p> <p>5 abandoned patent application?</p> <p>6 A. It's part -- it's part -- it's part of a</p> <p>7 petition.</p> <p>8 Q. On the second page, if you go back up to</p> <p>9 the top --</p> <p>10 A. On the second -- top of the second page?</p> <p>11 Okay.</p> <p>12 Q. Yes. Under the paragraph at the top</p> <p>13 numbered 4, Statement, there is a preprinted on</p> <p>14 the form the following statement, quote: The</p> <p>15 entire delay in filing the required reply from</p> <p>16 the due date for the required reply until the</p> <p>17 filing of a grantable petition under 37 CFR</p> <p>18 1.137(b) was unintentional, close quote.</p> <p>19 Do you see that?</p> <p>20 A. I see that sentence.</p> <p>21 Q. Did you ever talk to Mr. Schwedler about</p> <p>22 the basis on which he made that statement?</p> <p>23 A. I don't remember whether I spoke to</p> <p>24 Mr. Schwedler. So I don't remember whether or</p> <p>25 not I spoke with him about that particular</p>

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<p>45</p> <p>1 <b>statement. I just don't remember.</b></p> <p>2 Q. Earlier we saw a document that indicated</p> <p>3 that this Application 10/700,329 went abandoned</p> <p>4 for failure to respond to a March 17th, 2008</p> <p>5 office action.</p> <p>6 Do you recall asking or talking to</p> <p>7 Mr. Schwedler what occurred between the time the</p> <p>8 patent application went abandoned and the time in</p> <p>9 August 28, 2009 when Mr. Schwedler filed this</p> <p>10 petition to revive, what transpired?</p> <p>11 A. Same answer. I just don't remember</p> <p>12 whether I spoke to Mr. Schwedler or not. So I</p> <p>13 don't remember the specifics of any conversation</p> <p>14 I might have had with him.</p> <p>15 Q. What was the reason that the application</p> <p>16 went abandoned and remained abandoned from 2008</p> <p>17 until August 26 -- 28, 2009?</p> <p>18 A. I don't remember.</p> <p>19 Q. At some point in time, did you know the</p> <p>20 answer to that question?</p> <p>21 MR. BARHAM: Objection to form.</p> <p>22 A. I don't remember.</p> <p>23 MR. HASLAM: Could I have Schwedler</p> <p>24 Exhibit 9? Could I have Schwedler Exhibit 9,</p> <p>25 which I think is Tab 23? There we go.</p> <p>46</p> <p>1 AV TECH COOKE: My apologies.</p> <p>2 MR. HASLAM: Can you give control of</p> <p>3 this document to the witness?</p> <p>4 AV TECH COOKE: The witness should have</p> <p>5 control if he just -- yes.</p> <p>6 THE WITNESS: I have reviewed these four</p> <p>7 pages.</p> <p>8 BY MR. HASLAM:</p> <p>9 Q. Have you ever seen Schwedler Exhibit 9</p> <p>10 before?</p> <p>11 A. It may have been included in the papers</p> <p>12 I received from Mr. Sharma of your firm recently.</p> <p>13 Q. During the time that you represented XR</p> <p>14 Communications, did you see a copy of Schwedler</p> <p>15 Exhibit 9?</p> <p>16 A. I don't remember.</p> <p>17 Q. Having reviewed Schwedler Exhibit 9, you</p> <p>18 recognize that this is a document sent by the</p> <p>19 United States Patent and Trademark Office</p> <p>20 dismissing the petition that we reviewed that was</p> <p>21 Schwedler Exhibit 8, correct?</p> <p>22 A. It doesn't seem complete. I mean, it</p> <p>23 does seem like it denied his petition, but it</p> <p>24 seems like something's missing.</p> <p>25 Q. What do you think -- what do you think's</p>	<p>47</p> <p>1 missing?</p> <p>2 A. Well, I only read it once. You know,</p> <p>3 I'm trying to move things along. We have a lot</p> <p>4 of people on the phone here. It said there is a</p> <p>5 form attached, a blank form attached, and I</p> <p>6 didn't see a blank form attached.</p> <p>7 Q. You are referring to the last page that</p> <p>8 says certificate under 37 CFR 3.73(b) and privacy</p> <p>9 act statement?</p> <p>10 A. In the body, no. I mean, that would be</p> <p>11 another basis. But in the body of this, it</p> <p>12 says -- okay. So I'm on page 3. I'm in the</p> <p>13 first full paragraph, the paragraph that starts</p> <p>14 in view of the above, and the last sentence in</p> <p>15 that paragraph says a blank certificate under 37</p> <p>16 CFR 3.73(b) is enclosed with this petition for</p> <p>17 the Petitioner's convenience.</p> <p>18 That is what I noticed when I was</p> <p>19 reading through it and I just don't see that. So</p> <p>20 I'm just saying for the record it's not complete.</p> <p>21 Q. Well, the portion you do have, do you</p> <p>22 recall seeing that during your time working for</p> <p>23 XR Communications?</p> <p>24 A. No. I don't remember.</p> <p>25 Q. Do you recall in your review of the</p> <p>48</p> <p>1 files relating to Application 10/700,329 becoming</p> <p>2 aware that Mr. Schwedler had filed a petition to</p> <p>3 revive that abandoned application where the</p> <p>4 petition was denied or dismissed?</p> <p>5 A. I don't remember it from back then. I</p> <p>6 mean, like I said, Mr. Sharma from your firm sent</p> <p>7 me an attachment. And I mean, I didn't read it,</p> <p>8 but I scanned, I paged through it, and it looked</p> <p>9 like there were a couple petitions, a couple</p> <p>10 denials, then another petition and then it was</p> <p>11 granted.</p> <p>12 But I don't remember or have any</p> <p>13 recollection of doing -- working on this back in</p> <p>14 that time frame you are talking about.</p> <p>15 MR. HASLAM: All right. Can I have the</p> <p>16 document -- it's Tab 24. Can we mark this as</p> <p>17 Burke Exhibit 1?</p> <p>18 (Whereupon, Burke Deposition Exhibit 1</p> <p>19 was marked for identification and attached to the</p> <p>20 transcript.)</p> <p>21 BY MR. HASLAM:</p> <p>22 Q. Burke Exhibit 1 purports to be a renewed</p> <p>23 petition under 37 CFR 1.137(b) in connection with</p> <p>24 Application 10/700,329. Do you recall seeing a</p> <p>25 renewed petition that purported to renew what we</p>
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<p>49</p> <p>1 saw as Schwedler Exhibit 9?</p> <p>2 <b>A. I believe -- I believe there was</b></p> <p>3 <b>something like that in the documents that</b></p> <p>4 <b>Mr. Sharma sent me.</b></p> <p>5 Q. Okay. Back in the time that you were</p> <p>6 working for XR Communications, do you recall</p> <p>7 seeing the renewed petition which is Burke</p> <p>8 Exhibit 1?</p> <p>9 <b>A. I haven't reviewed Burke Exhibit 1. Do</b></p> <p>10 <b>you want me to take a look at it?</b></p> <p>11 Q. Well, let's me ask you just look at the</p> <p>12 first two pages first and see if that refreshes</p> <p>13 your recollection.</p> <p>14 THE WITNESS: Okay. I looked at the</p> <p>15 first two pages, only the first two pages.</p> <p>16 Q. Do you recall seeing the renewed</p> <p>17 petition that constitutes the first two pages of</p> <p>18 Burke Exhibit 1?</p> <p>19 <b>A. It might have been included in the</b></p> <p>20 <b>papers I got recently from Mr. Sharma from your</b></p> <p>21 <b>firm.</b></p> <p>22 Q. Do you recall seeing the first two</p> <p>23 pages, the renewed petition in Burke 1, during</p> <p>24 the time you represented XR Communications?</p> <p>25 <b>A. No.</b></p> <p>50</p> <p>1 Q. If you will look at the third page of</p> <p>2 Burke Exhibit 1, is it your understanding that in</p> <p>3 connection with a petition to revive an abandoned</p> <p>4 application, one of the requirements is that any</p> <p>5 response to an office action that was pending at</p> <p>6 the time it went abandoned was to be included in</p> <p>7 a petition to revive?</p> <p>8 <b>A. You didn't give me enough time to review</b></p> <p>9 <b>the third page. But yeah, when you are filing a</b></p> <p>10 <b>petition to revive, you have to file the</b></p> <p>11 <b>response, a response, which would have been due</b></p> <p>12 <b>at the time or just prior to the application</b></p> <p>13 <b>going abandoned. That's a general rule.</b></p> <p>14 Q. And on the third page of Burke Exhibit</p> <p>15 1, and that's Bates stamped Aruba 0032753 is a</p> <p>16 document titled Amendment, the first sentence of</p> <p>17 which says, quote: In response to the office</p> <p>18 action of March 17th, 2008, please consider the</p> <p>19 following amendments and remarks, close quote.</p> <p>20 And I don't know if you recall, but the</p> <p>21 office action that was pending at the time the</p> <p>22 Application 10/700,329 went abandoned was an</p> <p>23 office action dated March 17th, 2008. But the</p> <p>24 pages between 32753 and 32788 purport to be the</p> <p>25 amendment that is included in Burke Exhibit 1.</p>	<p>51</p> <p>1 And if you could look at the page</p> <p>2 stamped Aruba_0032792, that page is a form for</p> <p>3 designating a Power of Attorney, correct?</p> <p>4 <b>A. I will look at it. The page that's</b></p> <p>5 <b>designated Aruba 0032792 appears to be a Power of</b></p> <p>6 <b>Attorney.</b></p> <p>7 <b>Q. All right. And at the bottom of that</b></p> <p>8 <b>form under the heading Signature of Applicant or</b></p> <p>9 <b>Assignee of Record is a signature, the typed name</b></p> <p>10 <b>Thomas A. Sidley, and it indicates that</b></p> <p>11 <b>Mr. Sidley is a member Acuitas Equipment</b></p> <p>12 <b>Finance, LLC.</b></p> <p>13 <b>I asked you before does this refresh</b></p> <p>14 <b>your recollection as to whether you ever had any</b></p> <p>15 <b>conversations with Mr. Thomas A. Sidley</b></p> <p>16 <b>concerning Application 10/700,329?</b></p> <p>17 <b>A. You asked me that before, but this</b></p> <p>18 <b>document does not refresh my recollection as to</b></p> <p>19 <b>whether I ever had a conversation with</b></p> <p>20 <b>Mr. Sidley.</b></p> <p>21 Q. If you look at the next two pages, 793</p> <p>22 and 794?</p> <p>23 <b>A. I assume these are in order, the Bates</b></p> <p>24 <b>stamps are in order?</b></p> <p>25 MR. HASLAM: Yes. It should be.</p> <p>52</p> <p>1 <b>A. Okay. Just checking. All right. I</b></p> <p>2 <b>looked at the pages ending 793 and 794.</b></p> <p>3 Q. Okay. Do you recognize this form?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Do you have any understanding as to</p> <p>6 whether when filing a petition to revive an</p> <p>7 abandoned application a statement of all prior</p> <p>8 owners or assignees is required?</p> <p>9 <b>A. No. I don't recall it. It might have</b></p> <p>10 <b>said something about that in the last document</b></p> <p>11 <b>you had me looking at.</b></p> <p>12 Q. Okay. Now, earlier I had asked you some</p> <p>13 questions about whether you talked with people at</p> <p>14 Vivato, and you said: Well, isn't XR</p> <p>15 Communications Vivato?</p> <p>16 I want to use this document, and if you</p> <p>17 can turn to page 3794, I want to ask you some</p> <p>18 questions related to that topic.</p> <p>19 <b>A. That is the last page?</b></p> <p>20 <b>Q. Yes. You will see on the paragraph</b></p> <p>21 <b>numbered 4, it says: From Vivato Networks, Inc.,</b></p> <p>22 <b>formerly Vivato Networks, LLC to Acuitas Capital</b></p> <p>23 <b>Management, Inc.</b></p> <p>24 <b>Did you ever talk to anybody in</b></p> <p>25 <b>connection with Application 10/700,329, talk to</b></p>
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1 anyone at Vivato Networks, Inc., formerly known  
2 as Vivato Networks, LLC, the entity referred to  
3 in the paragraph numbered 4 on page 32794?  
4 MR. BARHAM: Objection to the extent it  
5 has been asked and answered, but you can respond.  
6 **A. I just don't remember.**  
7 **Q.** On the page -- on the line numbered 5,  
8 it says: From Aequitas Capital Management, Inc.  
9 to Aequitas Equipment Finance, LLC. Do you  
10 recall in connection with your work on  
11 Application 10/700,329 talking to anybody at  
12 Aequitas Capital Management, Inc.?  
13 **A. I don't remember one way or the other.**  
14 **Q.** Did you ever talk to anyone at Aequitas  
15 Capital Management, Inc. relating to the reasons  
16 why the Patent Application 10/700,329 went  
17 abandoned?  
18 **A. I don't remember whether I spoke to**  
19 **anybody at Aequitas Capital Management, Inc.**  
20 **Q.** Did you ever have any conversations with  
21 anyone at Aequitas Capital Management, Inc. as to  
22 what, if anything, they were doing between the  
23 time the patents went abandoned during their  
24 ownership of the patents?  
25 **A. I don't remember whether I spoke to**  
**anybody at that company.**  
**Q.** On line 5 is a reference to Aequitas  
Equipment Finance, LLC. Do you recall having any  
conversations with anyone at Aequitas Equipment  
Finance, LLC in connection with any work on  
attempting to revive Patent Application  
10/700,329?  
**A. I don't remember whether I had**  
**conversations with anybody at that LLC.**  
**Q.** On line 6, there is a reference to a  
company Vivato Networks Holdings, LLC. Do you  
recall talking to anybody at Vivato Networks  
Holdings, LLC concerning the abandonment or  
revival of Patent Application 10/700,329?  
**A. No. I don't remember whether I spoke --**  
**I don't have a recollection as to whether I spoke**  
**with anybody at any of these companies or LLCs.**  
MR. HASLAM: Okay. Okay. Could I have  
the next exhibit Tab 26.  
MR. BARHAM: Could we take a break  
before we move to another document?  
MR. HASLAM: Yes.  
MR. WANG: Mr. Haslam, we have been  
going for a long time, and I think Burke  
mentioned it's lunchtime over there.

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MR. HASLAM: Well, I will let Mr. Burke  
decide when he wants to go to lunch, but I have  
got a request for a recess and that is fine with  
me.  
Mr. Burke, what is your preference on  
lunch?  
THE WITNESS: Why don't we take a short  
break, and then can we just defer that question?  
Can we make it like a 10-minute break?  
MR. HASLAM: Yes. That is fine.  
THE WITNESS: Okay.  
MR. HASLAM: Ten minutes. We can go off  
the record.  
THE VIDEOGRAPHER: Yes, sir. Off record  
12:40.  
(Whereupon, Burke Deposition Exhibit 2  
was marked for identification and attached to the  
transcript.)  
(Thereupon, there was a recess taken at  
12:40 p.m.)  
(Thereupon, the proceedings were resumed  
at 12:53 p.m.)  
THE VIDEOGRAPHER: On record 12:53.  
BY MR. HASLAM:  
**Q.** I think when we broke, I just had marked  
as Burke Exhibit 2 a two-page document Bates  
stamped Aruba 0032699 through 800. This is a  
decision on a petition under 37 CFR 1.137(b). It  
relates to the petition -- renewed petition filed  
on November 18th, 2009 and it indicates that that  
petition is dismissed.  
Do you recall ever seeing Burke Exhibit  
2 before?  
**A. I'm just -- I'm just scanning it real**  
**quickly. It was probably included in the**  
**documents that Mr. Sharma from your office sent**  
**to me recently.**  
**Q.** Did looking at those documents that  
Mr. Sharma may have sent you recently refresh  
your recollection about reviewing this document  
during the time you represented XR  
Communications?  
**A. It did not refresh my recollection.**  
**Q.** You will see that this is -- relates to  
the renewed application filed November 18th,  
2009, which was Burke Exhibit 1. Do you have a  
recollection that in reviewing Application  
10/700,329 that Mr. Schwedler had made two  
attempts to get that petition revived?  
**A. I don't have any recollection from back**

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<p>65</p> <p>1 A. I don't remember any specific 2 conversations. In addition to the first two 3 gentlemen I spoke with regarding acquiring a 4 patent, the patent properties, I believe I spoke 5 to other people at the client who were more 6 technical oriented. 7 But I really cannot say whether I spoke 8 to any of them in connection with this particular 9 amendment. I just don't remember. 10 Q. Okay. Did you talk to Mr. Schwedler 11 about this amendment? 12 A. I don't remember. 13 Q. Okay. I'm going to ask you now a series 14 of questions about the pages in Burke Exhibit 4 15 that are Bates stamped Aruba 0032861 through 864. 16 So if you want to take a moment to review those, 17 and then I will ask you some questions. 18 THE WITNESS: 861 to 864? 19 MR. HASLAM: Yes. 20 THE WITNESS: What page am I stopping 21 on? 864? 22 MR. HASLAM: 864. 23 THE WITNESS: Okay. I looked at it. 24 Q. While you are on page 864, is that your 25 signature?</p> <p>66</p> <p>1 A. I believe so. 2 Q. And the date that is written in 11 -- 3 November 8, 2010, that's your handwriting? 4 A. I believe so, yes. 5 Q. And are the pages that we just -- that 6 you just reviewed, Aruba 0032861 through 864, 7 that's a renewed petition that you prepared? 8 A. I believe so. I mean, that's what it 9 looks like. I don't remember it, but it sure 10 looks like I did it. 11 Q. All right. And in the first sentence, 12 you state that this is -- this document is being 13 filed in response to a decision on petition 14 mailed May 6, 2010 regarding the above-identified 15 patent application, which is Application 16 10/700,329. 17 And the decision on petition mailed May 18 6th, 2010 dismissed that petition, correct? We 19 saw that earlier? 20 A. I believe so. 21 Q. Okay. What were you doing in connection 22 with Application 10/700,329 between May 6th, 23 2010, and November 2010 when you actually filed 24 the renewed petition for revival and associated 25 documents?</p>	<p>67</p> <p>1 A. I really don't remember. I mean, I 2 could speculate I was working on it. Obviously, 3 I worked on it. But I can't say what I was doing 4 when, what and when. 5 Q. Well, to the extent that you were 6 working on the renewed petition, what kind of 7 things do you recall doing? 8 A. I don't -- I don't recall any of this. 9 Q. Okay. You will see on page 32862 -- 10 A. Hold on. That's the second? 11 Q. The second page of what I asked you to 12 look at. 13 A. Go ahead. Go ahead. 14 Q. Okay. In the paragraph that begins this 15 application -- 16 A. I'm with you. 17 Q. -- was assigned to XR Communications, 18 LLC on December 23rd, 2009 while the renewed 19 petition was still pending -- withdraw that. 20 On page 32863, in the paragraph that 21 begins, quote: Turning now to the present 22 renewed petition. Do you see that paragraph? 23 A. I have it up on the screen. 24 Q. Okay. In the last sentence, you state, 25 quote: Accordingly, the statement of</p> <p>68</p> <p>1 unintentional delay in the renewed petition is 2 proper in that it is now signed by the attorney 3 of record for the current assignee of record 4 period, close quote. 5 That is a statement regarding 6 unintentional delay made by you or by 7 Mr. Schwedler are you referring to in that 8 sentence? 9 A. I don't recall what I was referring to 10 back then. It looks like I was addressing one of 11 the deficiencies that the petition's examiner had 12 pointed out. I believe he was pointing out that 13 Mr. Schwedler, you know, hadn't documented that 14 he was the correct person to sign the petition, 15 and I believe I'm saying here that I have 16 documented that I am the proper person to sign 17 this petition. 18 But I don't have a recollection of back 19 then, Mr. Haslam. I really don't. 20 Q. We saw on page 32806 in the statement 21 that you signed and prepared, the statement, 22 quote: The entire delay in filing the required 23 reply from the due date for the required reply 24 until the filing of a grantable petition under 37 25 CFR 1.137(b) was unintentional, close quote, that</p>
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1 is a statement made on your behalf and by you,  
2 correct?  
3 **A. What page are you talking about?**  
4 MR. HASLAM: 32806.  
5 **A. Is there a way to scroll up quicker than**  
6 **just scrolling? Hold on. Hold on. Okay. I'm**  
7 **on 32806. Please ask the question or give me the**  
8 **question again.**  
9 Q. If you go up to the paragraph numbered  
10 4, that's the statement regarding the entire  
11 delay was unintentional, that is a statement  
12 being made by you to the Patent Office, correct?  
13 **A. Yes.**  
14 Q. And that is a statement that encompasses  
15 the entire time from 2008 when the application  
16 went abandoned until the time that you made the  
17 statement in November 2010, correct?  
18 **A. I believe so, yes.**  
19 Q. What did you do to determine, prior to  
20 the time that you began working on this  
21 Application 10/700,329, from the time the patent  
22 application went abandoned until the time you  
23 began working on it, what did you do to determine  
24 that that entire time period was unintentional?  
25 **A. I don't remember what I did back then.**

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1 Q. Did you do anything?  
2 **A. Yes.**  
3 Q. What was it?  
4 **A. I determined that it was unintentional.**  
5 Q. What was the reason that it went  
6 abandoned in the first place?  
7 **A. You have shown me a document that said**  
8 **somebody didn't file a response.**  
9 Q. Why was that response not filed?  
10 MR. WANG: Objection to form.  
11 Argumentative.  
12 Q. From June --  
13 THE REPORTER: I didn't get an answer.  
14 **A. I said -- I believe I said I don't**  
15 **remember. That's my answer.**  
16 Q. And you recognize that your statement is  
17 intended to encompass the entire time from the  
18 time the patent went abandoned until the time you  
19 made this statement, correct?  
20 **A. I believe so, yes.**  
21 Q. Okay. After the patent went abandoned,  
22 what, if anything, was anybody doing attempting  
23 to revive the patent application?  
24 **A. Well, apparently one attorney filed two**  
25 **petitions, and another attorney, being me, filed**

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1 **another petition. And mine -- I believe mine was**  
2 **granted or we wouldn't all be sitting here today.**  
3 Q. What investigation did you do to  
4 determine that the entire time period from the  
5 time the patent application went abandoned until  
6 the time you filed your petition, what  
7 investigation did you do to determine that that  
8 entire time period was unintentional?  
9 **A. I don't remember.**  
10 Q. From May 10th until November 8th, what  
11 were you doing in connection with the petition to  
12 revive?  
13 MR. BARHAM: Objection. Asked and  
14 answered. You can respond.  
15 **A. You have asked me that already, but I**  
16 **really don't remember.**  
17 MR. HASLAM: Let me have marked Tab 28  
18 as the next exhibit in order.  
19 AV TECH COOKE: Stand by.  
20 (Whereupon, Burke Deposition Exhibit 5  
21 was marked for identification and attached to the  
22 transcript.)  
23 MR. HASLAM: Can you review -- we will  
24 mark this as Burke Exhibit 5.  
25 **A. We are hearing an alarm. I don't know**

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1 **if it's in this office or one of your offices.**  
2 MR. HASLAM: That's in my office. We  
3 are near the end. I'm going to ignore it.  
4 THE WITNESS: It's so clear, it sounds  
5 like it could be coming from here. If we see  
6 smoke behind you, I will let you know.  
7 MR. HASLAM: That is it, and then it  
8 will be too late.  
9 THE WITNESS: Amazing how clear it is.  
10 BY MR. HASLAM:  
11 Q. Do you recall seeing Burke Exhibit 5  
12 before?  
13 **A. I think it was included or at least some**  
14 **of it, not all of it, I think some of it was**  
15 **included in the documents that Mr. Sharma**  
16 **recently sent me. I'm not sure but I think it**  
17 **was.**  
18 Q. This document accepts the petition that  
19 we just saw, Burke Exhibit 4, correct?  
20 **A. It does a few things. It grants the**  
21 **petition and then it granted the Power of**  
22 **Attorney, you know, accepted that.**  
23 Q. In the -- on the first page, there's a  
24 statement in I guess the fourth paragraph, quote:  
25 It is not apparent whether the person signing the

Conducted on July 26, 2022

<p style="text-align: right;">77</p> <p>1 Argumentative.</p> <p>2 <b>A. I don't recall. You are asking me what</b></p> <p>3 <b>I thought back in 2000 -- whenever this was, in</b></p> <p>4 <b>2010?</b></p> <p>5 MR. HASLAM: Yes.</p> <p>6 <b>A. I don't know that I even -- I don't know</b></p> <p>7 <b>that I formed an opinion on it at the time. I</b></p> <p>8 <b>mean, direct knowledge to me is like you witness</b></p> <p>9 <b>something or, you know, you could witness</b></p> <p>10 <b>something firsthand.</b></p> <p>11 <b>Q. Well, let's focus on that. Did you have</b></p> <p>12 <b>direct knowledge of the circumstances of the</b></p> <p>13 <b>delay between -- of this application between June</b></p> <p>14 <b>of 2008 and the time that you filed your renewed</b></p> <p>15 <b>petition on November 8th, 2010?</b></p> <p>16 <b>A. I would be speculating. I definitely</b></p> <p>17 <b>didn't have it for the entire time period.</b></p> <p>18 <b>Q. For what time period did you have direct</b></p> <p>19 <b>knowledge?</b></p> <p>20 <b>A. When I was involved.</b></p> <p>21 <b>Q. And to the best of your recollection,</b></p> <p>22 <b>now having gone through several documents, what</b></p> <p>23 <b>time period do you think you were involved?</b></p> <p>24 <b>A. I don't recall. Probably it looks like</b></p> <p>25 <b>April of 2010.</b></p>	<p style="text-align: right;">79</p> <p>1 <b>A. I don't remember now. I don't know if</b></p> <p>2 <b>ever knew. But sitting here today, I have no</b></p> <p>3 <b>idea.</b></p> <p>4 <b>Q. Do you have any understanding as to</b></p> <p>5 <b>whether a client who does not pay or fails to pay</b></p> <p>6 <b>his counsel causing an abandonment is a reason</b></p> <p>7 <b>that meets the unintentional delay requirements</b></p> <p>8 <b>for reviving a petition?</b></p> <p>9 MR. BARHAM: Objection to form.</p> <p>10 <b>A. Are you asking me -- are you asking me</b></p> <p>11 <b>sitting here right now regarding my understanding</b></p> <p>12 <b>of the law?</b></p> <p>13 <b>Q. I'm really asking you at the time you</b></p> <p>14 <b>filed the petition, renewed petition in 2010, did</b></p> <p>15 <b>you have an understanding on that subject?</b></p> <p>16 <b>A. I have no recollection of my</b></p> <p>17 <b>understandings or what I did or what reasonable</b></p> <p>18 <b>inquiry I did at the time.</b></p> <p>19 <b>Q. Did you do any legal research as to what</b></p> <p>20 <b>constituted unintentional delay with respect to</b></p> <p>21 <b>the reason for the original abandonment?</b></p> <p>22 <b>A. Can you just -- somebody repeat that</b></p> <p>23 <b>either have it read back or repeat it.</b></p> <p>24 <b>Q. I can repeat it. Did you do any legal</b></p> <p>25 <b>research at the time you prepared your renewed</b></p>
<p style="text-align: right;">78</p> <p>1 <b>Q. Okay. So you had direct knowledge --</b></p> <p>2 <b>A. At least, you know, at least.</b></p> <p>3 <b>Q. So from April 10th, at least, through</b></p> <p>4 <b>November 8th, 2010, you had direct knowledge of</b></p> <p>5 <b>the facts and circumstances of the delay at</b></p> <p>6 <b>issue, correct?</b></p> <p>7 <b>A. I don't remember what I knew back then.</b></p> <p>8 <b>Looking at these documents, it looked like the</b></p> <p>9 <b>delay was unintentional from the -- you know,</b></p> <p>10 <b>from the entire time period.</b></p> <p>11 <b>Q. And on what do you base that?</b></p> <p>12 MR. BARHAM: Objection to the extent it</p> <p>13 has been asked and answered, but you can respond.</p> <p>14 <b>A. On my practice, my -- my statement, the</b></p> <p>15 <b>other fellow's statements.</b></p> <p>16 <b>Q. You relied on Mr. Schwedler's</b></p> <p>17 <b>statements?</b></p> <p>18 <b>A. I have no idea what I relied on back</b></p> <p>19 <b>then. I just said from looking at these</b></p> <p>20 <b>documents, it looks like the entire time period.</b></p> <p>21 <b>Q. What was the reason that Mr. Brooks</b></p> <p>22 <b>withdrew from representing the client, his</b></p> <p>23 <b>client?</b></p> <p>24 <b>A. I have no idea.</b></p> <p>25 MR. WANG: Objection to form.</p>	<p style="text-align: right;">80</p> <p>1 <b>petition for revival in November of 2010 as to</b></p> <p>2 <b>what constituted the legal bases for an</b></p> <p>3 <b>unintentional delay causing abandonment?</b></p> <p>4 <b>A. I don't have a specific recollection but</b></p> <p>5 <b>I probably did, because that would be my</b></p> <p>6 <b>practice. This isn't something like we deal</b></p> <p>7 <b>with every day. Right? So I probably looked</b></p> <p>8 <b>into it.</b></p> <p>9 <b>Q. Did you document in any way any inquiry</b></p> <p>10 <b>or diligence or investigation that you did about</b></p> <p>11 <b>the circumstances surrounding the reason for the</b></p> <p>12 <b>original abandonment and any efforts made to</b></p> <p>13 <b>revive the patent between June of 2008 and the</b></p> <p>14 <b>time that you filed your renewed petition on</b></p> <p>15 <b>November 8th, 2010?</b></p> <p>16 MR. WANG: Objection to form.</p> <p>17 Confusing, compound.</p> <p>18 <b>A. I don't remember.</b></p> <p>19 <b>Q. Do you still have any files from the</b></p> <p>20 <b>time that you represented XR Communication in</b></p> <p>21 <b>connection with this application?</b></p> <p>22 <b>A. I don't know.</b></p> <p>23 <b>Q. What was the reason for the delay</b></p> <p>24 <b>between May 6th, 2010 when Mr. Schwedler's second</b></p> <p>25 <b>petition for revival was denied and November 8th,</b></p>

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<p>89</p> <p>1 And I have asked you before, but having 2 looked at that, did you make an inquiry as to the 3 entire period of time from March 17 -- from 4 March -- from the day after the due date of the 5 March 17th office action 2008 until the time you 6 filed your petition for revival? 7 <b>A. According to my practice and the way</b> 8 <b>I've always practiced, I did, but I just don't</b> 9 <b>remember what I did. I don't -- wouldn't file</b> 10 <b>something like this willy-nilly. I would do what</b> 11 <b>I was supposed to do.</b> 12 <b>It's -- you know, I have been involved</b> 13 <b>in disputes, you know, since before I got out of</b> 14 <b>law school. And it's obvious that when patents</b> 15 <b>are in litigation, that things like this are</b> 16 <b>combed over with a fine tooth comb.</b> 17 <b>It's no surprise that you got to do</b> 18 <b>things right up front, correctly up front so that</b> 19 <b>when somebody goes over it with a fine tooth</b> 20 <b>comb, there are no issues.</b> 21 Q. And given that people go over it with a 22 fine tooth comb, you would have documented the 23 analysis you did to support the statement that 24 you made that entire time of delay was 25 unintentional, correct?</p>	<p>91</p> <p>1 THE WITNESS: No. 2 EXAMINATION BY COUNSEL FOR THE PLAINTIFF 3 BY MR. WANG: 4 Q. Mr. Burke, now is 2022, correct? 5 <b>A. 2022.</b> 6 Q. And the events that Mr. Haslam asked 7 about today occurred in 2000 -- 8 THE WITNESS: Time out. Can somebody 9 mute? Somebody is moving papers around. It's 10 just making it difficult to hear. Can you start 11 that question again? 12 MR. WANG: Sure. Sure. 13 BY MR. WANG: 14 Q. The events that we have been talking 15 about in this deposition occurred roughly in the 16 2009/2010 time frame? 17 <b>A. Roughly and earlier, yes.</b> 18 Q. So that's at least 13 years ago, 19 correct? 20 <b>A. Ballpark, yes.</b> 21 Q. And you did not have a specific -- 22 specific recollections of particular 23 conversations or actions from that time period 13 24 years ago, correct? 25 <b>A. That's correct.</b></p>
<p>90</p> <p>1 <b>A. No.</b> 2 MR. WANG: Objection to form. 3 <b>A. I don't know what I did. And not</b> 4 <b>necessarily, no.</b> 5 Q. You did not talk to anybody about the 6 reason why the application went abandoned in the 7 first place, correct? 8 MR. WANG: Objection to form. 9 Mischaracterizes testimony. Asked and answered. 10 <b>A. That's not correct, Mr. Haslam.</b> 11 Q. Who did you talk to? 12 <b>A. I told you I don't remember, but you</b> 13 <b>can't say -- you can't -- I don't remember who I</b> 14 <b>spoke to or what I did, but I can't sit here and</b> 15 <b>testify that I didn't speak to anybody.</b> 16 <b>I mean, it didn't go abandoned on my</b> 17 <b>watch so to speak.</b> 18 Q. But your statement covers that time 19 period when it wasn't on your watch, correct? 20 <b>A. Yes, sir.</b> 21 MR. HASLAM: I have no further 22 questions. 23 MR. WANG: I have some questions. But 24 before I continue, Mr. Burke do you need a break 25 or would you like a short break?</p>	<p>92</p> <p>1 Q. And -- and you wouldn't want to 2 speculate to testify about any specific actions 3 or communications if you didn't have a 4 recollection about them, correct? 5 <b>A. I think I told Mr. Haslam everything I</b> 6 <b>remember.</b> 7 Q. Okay. I want to clarify something. And 8 I apologize if you already stated this. But many 9 times in today's deposition, you would respond to 10 Mr. Haslam's questions with I don't recall or I 11 don't remember. 12 Do you recall that? 13 <b>A. Yeah. That was my response to a lot of</b> 14 <b>Mr. Haslam's questions.</b> 15 Q. Right. Just to be absolutely clear, 16 when you gave that response, you were not 17 testifying that something did or did not occur, 18 correct? 19 <b>A. That's correct.</b> 20 Q. It was just that you didn't have a 21 specific recollection of that event or whether or 22 not it occurred sitting here today? 23 <b>A. I think a lot of it, I didn't have any</b> 24 <b>general recollection. So yeah, I didn't have a</b> 25 <b>specific recollection or even a general</b></p>

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